

FILED

Date 2/16/16 By Susan Saylor

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**BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2016-40

FREDERICK V. MARTINEZ
88731 70th Street
Thermal, CA 92274

A C C U S A T I O N

Applicator's License No. RA 49671
Field Representative's License No. FR 45202

Respondent.

Complainant alleges:

PARTIES

1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Consumer Affairs.

2. On or about February 11, 2009, the Board issued Applicator's License Number RA 49671 to Frederick V. Martinez (Respondent). The Applicator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

3. On or about February 22, 2010, the Board issued Field Representative's License Number FR 45202 to Frederick V. Martinez (Respondent). The Field Representative's License

1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 June 30, 2018, unless renewed.

3 JURISDICTION

4 4. This Accusation is brought before the Board, under the authority of the following
5 laws. All section references are to the Business and Professions Code (Code) unless otherwise
6 indicated.

7 5. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or
8 revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts
9 or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil
10 penalty.

11 6. Section 8625 of the Code states:

12 The lapsing or suspension of a license or company registration by operation of
13 law or by order or decision of the board or a court of law, or the voluntary surrender
14 of a license or company registration shall not deprive the board of jurisdiction to
15 proceed with any investigation of or action or disciplinary proceeding against such
licensee or company, or to render a decision suspending or revoking such license or
registration.

16 STATUTORY PROVISIONS

17 7. Section 482 of the Code states:

18 Each board under the provisions of this code shall develop criteria to evaluate
19 the rehabilitation of a person when:

20 (a) Considering the denial of a license by the board under Section 480; or

21 (b) Considering suspension or revocation of a license under Section 490.

22 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

23 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
24 revoke a license on the ground that the licensee has been convicted of a crime substantially related
25 to the qualifications, functions, or duties of the business or profession for which the license was
26 issued.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a board
3 within the department pursuant to law to deny an application for a license or to suspend
4 or revoke a license or otherwise take disciplinary action against a person who holds a
5 license, upon the ground that the applicant or the licensee has been convicted of a crime
6 substantially related to the qualifications, functions, and duties of the licensee in question,
7 the record of conviction of the crime shall be conclusive evidence of the fact that the
8 conviction occurred, but only of that fact, and the board may inquire into the
9 circumstances surrounding the commission of the crime in order to fix the degree of
10 discipline or to determine if the conviction is substantially related to the qualifications,
11 functions, and duties of the licensee in question.

12 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
13 'registration.'

14 10. Section 8649 of the Code states:

15 Conviction of a crime substantially related to the qualifications, functions, and
16 duties of a structural pest control operator, field representative, applicator, or registered
17 company is a ground for disciplinary action. The certified record of conviction shall be
18 conclusive evidence thereof.

19 11. Section 8654 of the Code states:

20 Any individual who has been denied a license for any of the reasons specified in
21 Section 8568, or who has had his or her license revoked, or whose license is under
22 suspension, or who has failed to renew his or her license while it was under suspension, or
23 who has been a member, officer, director, associate, qualifying manager, or responsible
24 managing employee of any partnership, corporation, firm, or association whose
25 application for a company registration has been denied for any of the reasons specified in
26 Section 8568, or whose company registration has been revoked as a result of disciplinary
27 action, or whose company registration is under suspension, and while acting as such
28 member, officer, director, associate, qualifying manager, or responsible managing
 employee had knowledge of or participated in any of the prohibited acts for which the
 license or registration was denied, suspended or revoked, shall be prohibited from serving
 as an officer, director, associate, partner, qualifying manager, or responsible managing
 employee of a registered company, and the employment, election or association of such
 person by a registered company is a ground for disciplinary action.

 12. Section 8655 of the Code states:

 A plea or verdict of guilty or a conviction following a plea of nolo contendere made
 to a charge substantially related to the qualifications, functions, and duties of a structural
 pest control operator, field representative, applicator, or registered company is deemed to
 be a conviction within the meaning of this article or Section 8568 of this chapter. The
 board may order the license or registration suspended or revoked, or may decline to issue
 a license, when the time for appeal has elapsed, or the judgment of conviction has been
 affirmed on appeal or when an order granting probation is made suspending the
 imposition of sentence, irrespective of a subsequent order under the provisions of Section
 1203.4 of the Penal Code allowing the individual or registered company to withdraw a
 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
 dismissing the accusation, information or indictment.

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REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1937.1 states:

For the purposes of denial, suspension or revocation of a license or company registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company under Chapter 14 of Division 3 of the code if to a substantial degree it evidences present or potential unfitness of such licensee or registered company to perform the functions authorized by the license or company registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

(a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

(b) Commission of any of the following in connection with the practice of structural pest control:

(1) Fiscal dishonesty

(2) Fraud

(3) Theft

(4) Violations relating to the misuse of pesticides.

14. California Code of Regulations, title 16, section 1937.2 states:

...

(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

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1 COSTS

2 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or violations
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 CAUSE FOR DISCIPLINE

9 **(April 16, 2015 Criminal Conviction of Preparing Fraudulent Insurance Claims in 2012)**

10 16. Respondent has subjected his license to disciplinary action under sections 490 and
11 8649 of the Code in that he was convicted of a crime that is substantially related to the
12 qualifications, functions, and duties of a licensee. The circumstances are as follows:

13 a. On or about April 16, 2015, in a criminal proceeding entitled *People of the*
14 *State of California v. Frederick V. Martinez*, in Riverside County Superior Court, case number
15 INF1401772, Respondent was convicted on his plea of guilty of violating Penal Code section 550
16 (b)(1), a felony, (knowingly preparing and making fraudulent insurance claims), which was
17 reduced to a misdemeanor pursuant to Penal Code section 17(b)(4). Pursuant to the plea bargain,
18 the count of Penal Code section 550(a)(1), a felony, (presented a false and fraudulent claim for
19 payment of a loss under contract of insurance) was dismissed.

20 b. As a result of the conviction, Respondent was granted summary probation
21 for (3) three years, be committed to the custody of the sheriff for 60 days, which can be served in
22 the electronic monitoring program (ankle bracelet), and pay a fine and a penalty in the amount of
23 \$9,700.00. Respondent was further ordered to pay victim restitution in the amount of \$19,549.91,
24 which has been satisfied.

25 c. The circumstances that led to the conviction are that on or about between
26 August 29, 2012 and October 4, 2012, the California Department of Insurance began investigating
27 Respondent and other co-defendants who conspired to submit fraudulent insurance claims.
28 Investigators found that Respondent was involved in setting up fraudulent insurance claims with

multiple insurance companies and conspired with other co-defendants in submitting the claims.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Applicator's License Number RA 49671, issued to Frederick V. Martinez;
2. Revoking or suspending Field Representative's License Number FR 45202, issued to Frederick V. Martinez;
3. Prohibiting Frederick V. Martinez from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the period that discipline is imposed on Applicator's License Number RA 49671 and Field Representative's License number FR 45202, issued to Frederick V. Martinez;
4. Ordering Frederick V. Martinez to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
5. Taking such other and further action as deemed necessary and proper.

DATED: 2/16/16



SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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